

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-58376; File No. SR-NYSEArca-2008-70)

August 18, 2008

Self-Regulatory Organizations; NYSE Arca, Inc.; Order Granting Approval of Proposed Rule Amending NYSE Arca Equities Rule 5.2(j)(6)(B)(I), the Generic Listing Standard for Equity Index-Linked Securities

I. Introduction

On June 27, 2008, NYSE Arca, Inc. (“NYSE Arca” or “Exchange”), through its wholly owned subsidiary, NYSE Arca Equities, Inc. (“NYSE Arca Equities”), filed with the Securities and Exchange Commission (“Commission”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposal to amend NYSE Arca Equities Rule 5.2(j)(6)(B)(I), the Exchange’s generic listing standard for equity index-linked securities (“Equity Index-Linked Securities”) to: (1) eliminate initial and continued listing capitalization weighted and modified capitalization weighted index requirements; and (2) to adjust certain equity index weighting criteria and adopt notional volume traded per month to both initial listing standards and continued listing standards. The proposed rule change was published for comment in the Federal Register on July 17, 2008.<sup>3</sup> The Commission received no comments on the proposal. This order approves the proposed rule change.

II. Description of the Proposal

NYSE Arca proposes to amend NYSE Arca Equities Rule 5.2(j)(6)(B)(I), the Exchange’s generic listing standard for Equity Index-Linked Securities to: (1) eliminate initial and continued listing capitalization weighted and modified capitalization weighted index requirements; and (2)

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<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> See Securities Exchange Act Release No. 58142 (July 11, 2008), 73 FR 41147.

to adjust certain equity index weighting criteria and adopt notional volume traded per month to both the initial listing standards and continued listing standards.

The Exchange proposes that capitalization weighted index or modified capitalization weighted indexes comply with the initial and continued listing requirements currently applicable to all other equity indexes under NYSE Arca Equities Rule 5.2(j)(6)(B)(I) regardless of the index methodology.

For Equity Index-Linked Securities, the Exchange proposes to eliminate NYSE Arca Equities Rule 5.2(j)(6)(B)(I)(1)(b)(iii), the current initial listing requirement that, in the case of a capitalization weighted index or modified capitalization weighted index, the lesser of the five highest dollar weighted component securities in the index or the highest dollar weighted component securities in the index that in the aggregate represent at least 30% of the total number of component securities in the index, must have an average monthly trading volume of at least 2,000,000 shares over the previous six months. The Exchange also proposes to eliminate NYSE Arca Equities Rule 5.2(j)(6)(B)(I)(2)(a)(iii), the current continued listing requirement, that in the case of a capitalization weighted index or modified capitalization weighted index, the lesser of the five highest dollar weighted component securities in the index or the highest dollar weighted component securities in the index that in the aggregate represent at least 30% of the total number of stocks in the index have an average monthly trading volume of at least 1,000,000 shares over the previous six months.

The Exchange is also proposing to: (i) remove the requirement that each of the lowest weighted component securities in the index that in the aggregate account for 10% of the weight of the index have trading volume of at least 500,000 shares per month for each of the last six

months; and (ii) adopt minimum global notional volume (“Global Notional Volume”)<sup>4</sup> traded per month of \$25,000,000 averaged over of the last six months as an option for meeting the listing requirements.

With respect to the continued listing criteria, Rule 5.2(j)(6)(B)(I)(2)(a)(ii) currently sets forth that the trading volume of each component security in the index must be at least 500,000 shares for each of the last six months, except that for each of the lowest weighted components in the index that in the aggregate account for no more than 10% of the weight of the index, trading volume must be at least 400,000 shares for each of the last six months.

The Exchange is proposing to: (i) remove the requirement that the lowest weighted component securities in the index that in the aggregate accounting for no more than 10% of the weight of the index have trading volume of at least 400,000 shares for each of the last six months; and (ii) adopt minimum Global Notional Volume traded per month of \$12,500,000 averaged over the last six months as an option for satisfying the continued listing requirements.

### III. Commission’s Findings and Order Granting Approval of the Proposed Rule Change

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.<sup>5</sup> In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act<sup>6</sup> in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster

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<sup>4</sup> Global Notional Volume is defined as the total shares traded globally times the price per share.

<sup>5</sup> In approving this proposed rule change, the Commission notes that it has considered the proposed rule’s impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>6</sup> 15 U.S.C. 78f(b)(5).

cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanisms of a free and open market and a national market system, and, in general, to protect investors and the public interest.

The Commission believes that the Exchange's proposal to eliminate the above-described initial and continued listing requirements for Equity-Index Linked Securities based upon capitalization weighted and modified capitalization weighted indexes would subject all Equity Index-Linked Securities to the same listing requirements, regardless of the methodology upon which a product's underlying index is based. The Commission believes that the proposal should facilitate the listing and trading of Equity Index-Linked Securities with different index methodologies, thus benefiting investors by providing them with a wider selection of derivative products.

The Exchange also proposes to adjust the index weighting criteria in NYSE Arca Equities Rules 5.2(j)(6)(B)(I)(1)(b)(ii) and 5.2(j)(6)(B)(I)(2)(a)(ii) and to adopt an averaged minimum global notional volume traded per month as an option for meeting these initial and continued listing requirements. The Commission believes that focusing the listing requirements on measuring component stocks that in the aggregate account for 90% of the weight of an index should be sufficient to evaluate the liquidity of an index underlying a given Equity-Index Linked Security. The Commission further believes that the use of global notional volume as an alternative measure to global trading volume is acceptable in that it should mitigate the volume discrepancies between low- and high-priced stocks. Finally, the Exchange's proposal to adopt an average of trading or notional volume, as the case may be, should help to eliminate seasonal

volume fluctuations that may occur in the trading of an Equity-Index Linked Security in a given month. The Commission believes that the proposal should promote competition and benefit investors, Equity Index-Linked Securities issuers, and third-party index sponsors by expediting the Exchange's ability to list and trade Equity Index-Linked Securities based on a broader group of indexes.

For the foregoing reasons, the Commission believes that the proposed rule change is consistent with the Act.

#### IV. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,<sup>7</sup> that the proposed rule change (SR-NYSEArca-2008-70) be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>8</sup>

Florence E. Harmon  
Acting Secretary

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<sup>7</sup> 15 U.S.C. 78s(b)(2).

<sup>8</sup> 17 CFR 200.30-3(a)(12).